

CERTIFIED TRANSLATION

GOVERNMENT OF PUERTO RICO
DEPARTMENT OF AGRICULTURE
OFFICE FOR THE REGULATION OF THE DAIRY INDUSTRY
P.O. BOX 10163
SAN JUAN, PUERTO RICO 00908-1163

ADMINISTRATIVE ORDER NO. 2020-34

**RE: TO NOTIFY THE RAW MILK FORECAST FOR FISCAL YEAR 2020-2021 AND AWARD
MINIMUM PROPORTIONS OF RETAINED MILK TO PROCESSING PLANTS TO
ENSURE NORMAL OPERATIONS**

I. Legal Basis

Public Law No. 34, enacted on June 11, 1957, as amended, 5 L.P.R.A. 1092), (hereinafter “Public Law No. 34”) vests the Office for the Regulation of the Dairy Industry (hereinafter “ORIL”), through its Administrator, with the power to investigate, oversee, and regulate the production phases of milk and milk byproducts in Puerto Rico. This authority extends from the initial phase of agricultural production to the subsequent phases of production, sterilization, manufacture, storage, transportation, distribution, purchase, and sale to the general public, as fresh milk, as well as any raw milk to be processed and sold for the production of any other dairy products, of any grade, type, or nature, including the production of ultra pasteurized and aseptic milk (hereinafter “UHT”).

Pursuant to Section 5 of Public Law 34, *supra*, *Id.* §1096, ORIL is responsible for, among other things: i) developing and maintaining satisfactory marketing conditions to protect the all of the phases of production, distribution, and sale of milk and its byproducts; ii) preventing monopoly and unfair competition practices, as well as discriminations in the different phases of the industry, from production to the sale of milk and its byproducts to the consumer; iii) investigating the business dealings and relationships of producers, processors, sterilizers, and retailers between themselves, as well as between any one of them and the consumers; iv) ensuring that the maximum and minimum prices fixed for fluid milk and the maximum prices of its byproducts at all levels of distribution are implemented and enforced; v) in the exercise of the powers vested by the Law, the Administrator is expressly authorized to take all pertinent measures to enforce the provisions thereof.

[One set of initials on the left margin of each page]

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I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

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The Administrator has the authority to “work out the necessary plans to dispose of milk surplus, so that the industry as a whole is safeguarded”. 5 L.P.R.A. Sec 1096(b)(4). The purpose of Regulation 10 of the Dairy Industry is to define the limits of discretion of the exclusive power of the Administrator to manage surplus milk. Regulation 8657 (hereinafter “Regulation 10”). For channeling purposes, “the milk produced in Puerto Rico will be used, in order of priority, to manufacture fresh milk [and], [o]nce the demand for fresh milk is exhausted... it will be used to manufacture other products by said fresh milk processing plants and by Indulac, which acts as the balancing plant, and by the manufacturers of milk byproducts. Regulation 8657, Section 8(b). “The order of priority for the production of milk byproducts with the surplus will be based on the financial performance of farmers, starting with farmers with the greatest yield and following, on a descending scale, with the rest.” *Id.* Processors “will have access to the surplus at the same price depending on how said surplus will be used”. Regulation 8657, Section 8(f). “The decisions of the Administrator regarding the channeling or disposal of the surplus milk will be based on the particular circumstances of the Industry at the time at which they are made. Among these, the Administrator will take into consideration the particular circumstances of each processor that seeks to use the surplus and to what extent they need said surplus for their normal operation.” Reg. 8657, Sec. 8(g). Hence, “the Administrator will calculate the amount of surplus milk that will be prospectively produced and will award the portions thereof requested by the producers and according to each producer’s priority or preference to access said surplus.” *Id.*

II. Purpose

ORIL has the public policy of establishing rules and regulations that stabilize and stimulate the progress of the production, processing, and marketing of milk and its byproducts, and, therefore, the industry’s prosperity. Among other things, the Administrator has the authority to “establish the standards for processing, sterilizing, grading, packing, bottling, canning, labeling, quality, and presentation of milk and its byproducts” and “establish systems of delivery by producers and processors and of receipt by processors and other handlers of milk and its byproducts”. 5 LPRA §1096(b)(5) and (6).

[hw on right margin: The surplus is not being distributed.]



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As it is well known in the dairy industry, each year, between July and October, production gradually decreases until it reaches its lowest point in October. However, this year's decrease has been greater than previous years due to the lack of dairy cows. As a result, the Industria Lechera de Puerto Rico, Inc. (Indulac) lacks the minimum amount of milk needed for its normal operations.

To address this matter, the Administrator has examined the production, retention, and the consumer trends. In fiscal year 2019-2020, both plants collected the amount of 233,014,088 quarts of raw milk. The raw milk was distributed as follows: 62% to Suiza Dairy, Corp. (SDC) and 38% to Vaquería Tres Monjitas, Inc. (VTM), that is to say, 144,104,637 quarts collected by SDC and 88,909,451 quarts collected by VTM.

Of the raw milk collected from farms in fiscal year 2019-2020, SDC retained 99,552,722 quarts of raw milk to manufacture its fluid products consisting of fresh milk in a variety of packages and milkfat percentages and UP/UHT milk for the local market. Its bimonthly average was 3,828,951 quarts of raw milk, which is equal to an average of 273,496 quarts per day. Of the raw milk collected in fiscal year 2019-2020, VTM retained 58,675,108 quarts of raw milk to manufacture its fluid products consisting of fresh milk in a variety of packages and milkfat percentages and extended shelf-life milk for the local market. Its bimonthly average was 2,256,735 quarts of raw milk, which is equal to an average of 161,195 quarts per day. On the other hand, in fiscal year 2019-2020, Indulac retained 27,251,055 quarts of raw milk to manufacture its fluid products consisting of UHT milk for the local market. Its bimonthly average was 1,051,964 of raw milk, which is equal to 75,140 quarts per day.

The Administrator estimates that the dairy farm production will be around 200,000,000.00 quarts of raw milk in fiscal year 2020-2021. To make sure that the processing plants can take the necessary measures to manage lower production levels, avoid the total or partial shut down of a processing plant, and ensure the normal operations of all processing plants, raw milk will be awarded in the following proportions: SDC may retain 106,775,572 quarts of raw milk, for a bimonthly average of 4,106,637 quarts of raw milk, or 293,331 quarts per day; VTM may retain 65,876,373 quarts of raw milk, for a bimonthly average of 2,533,707 quarts of raw milk, or 180,979 quarts per day; and Indulac may retain 27,351,055 quarts of raw milk, for a bimonthly average of 1,051,964 quarts of raw milk, or 75,140 quarts per day.

[hw:Where is Indulac's need]



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Wherefore, it is hereby Ordered:

III. Order

- 1) Of an estimated production of 200,000,000 quarts of raw milk in fiscal year 2020-2021, SDC may retain a minimum of 166,772,572 quarts of raw milk, for a bimonthly average of 4,106,637 of raw milk, or 293,331 quarts per day.
- 2) Of an estimated production of 200,000,000 quarts of raw milk in fiscal year 2020-2021, VTM may retain a minimum of 65,876,373 quarts of raw milk, for a bimonthly average of 2,533,707 quarts of raw milk, or 180,979 quarts per day.
- 3) Of an estimated production of 200,000,000 quarts of raw milk in fiscal year 2020-2021, Indulac may retain a minimum of 27,351,055 quarts of raw milk, for a bimonthly average of 1,051,964 quarts of raw milk or 75,140 quarts per day.
- 4) To ensure that Indulac receives the estimated amount of raw milk for its normal operations, the following dairy farms are transferred to Indulac:

License	Dairy Farm
3519	VAQ LUIS F. FERNANDEZ PEREZ, INC.
2025	AGRIC. RAMON ROSA DELGADO, INC.
2123	AGRIC. RAMON ROSA DELGADO, INC.
3016	Q. DEVELOPMENT, INC.
3337	NANGO DAIRY, INC.
3878	VAQUERIA LOPEZ, INC.
3379	VAQUERIA LOPEZ, INC.
3444	VAQUERIA LOPEZ, INC.

- 5) The Administrator will continue monitoring the production of raw milk and will make any necessary adjustments to the forecasts set forth in this order. Any change to the minimum volume will be made upon a duly justified written petition.
- 6) Any person that violates or fails to comply with the provisions of this Administrative Order will be subject to the imposition of an administrative fine, as provided in Section 24 of Public

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Law No. 34 of June 11, 1957, as amended, of no less than five hundred dollars [(\$500)] and no greater than five thousand dollars (\$5,000). Prior to the imposition of such administrative fine, the Administrator will hold a hearing presided by such or by one of his agents to ensure the complete protection of the constitutional rights of the person aggrieved by the proceeding.

IV. Observance:

The Processing Plants must fully comply with this Administrative Order. It is forewarned that failing to comply with this Administrative Order may result in the imposition of the penalties provided in Public Law No. 34 of June 11, 1957, as amended.

V. Repeal:

Any rule or provision currently in effect or that is found to be in conflict with what has been established herein will be repealed.

VI. Severability:

In the event that any part of this Administrative Order is declared null and void or contrary to law, the validity of the remaining provisions will not be affected.

VII. Validity:

This Administrative Order will take effect immediately.

In San Juan, Puerto Rico, this [hw:30th] day of September 2020.

LET IT BE SO NOTIFIED:

[Illegible signature]

JORGE A. CAMPOS MERCED

ADMINISTRATOR

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